IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY PETITION NOS. 1-Z AND 2-Z OF 2003.

COMPANY PETITION NO. 1-Z OF 2003.

Zuari Industries Limited,
having its Registered
Office at Jai Kisaan
Bhawan, Zuarinagar-Goa. ... Petitioners.

Mr. Atul Setalwad, Senior Advocate with Mr. Gaurav Joshi and Mr. D. Pangam, Advocates for the Petitioners.

Mr. R.M. Kadam with Mr. P.A. Kholkar, Advocates for the Intervenors.

COMPANY PETITION NO. 2-Z OF 2003.

Zuari Leasing and Finance
Corporation Limited, having
its Registered Office at Jai
Kisaan Bhawan, Zuarinagar-Goa ... Petitioners.

Mr. M.S. Sonak, Advocate for the Petitioners.

Mr. P.A. Kholkar, Advocate for the Intervenors.

Coram : P.V. HARDAS, J.

Date : 4th July 2003.

ORAL JUDGMENT.

These petitions have been filed by the petitioners for obtaining sanction of this Court to the arrangement embodied in the Scheme of Amalgamation, which is annexed to the petition as Exhibit F. As per the said Scheme the entire undertaking of Zuari Leasing and Finance Corporation Limited, the transferor company and petitioners in Company Petition No. 2-Z of 2003, shall stand transferred and vested in the petitioner-Company.

2. Zuari Industries Limited, the petitioners in Company Petition No. 1-Z of 2003 was incorporated on 12th May 1967 having its Registered Office at Jai Kisaan Bhawan, Zuarinagar, Goa. The Authorised Share Capital is 3,57,50,000 equity shares of Rs. 10/- each and 4,25,000 Redeemable Cumulative Preference Shares of Rs. 10/- each. The Issued Capital of the petitioner Company is 2,94,51,168 equity shares of Rs. 10/- each and the Subscribed and Paid-up Capital of the petitioner Company is 2,94,40,604 equity shares of Rs. 10/- each fully paid. The petitioner Company is presently engaged in the business of manufacture and sale of fertilizers, manufacture of ready-to-assemble furniture and marketing of agri-inputs. It is averred that the petitioner Company has been in a sound financial position. The profits of the petitioner Company for the year ended 31st March 2002, after tax, were 1265.19 lakhs.

3. The Board of Directors of the petitioner Company thought it advantageous to have an amalgamation of Zuari Leasing and Finance Corporation Limited (transferor company), petitioners in Company Petition No. 2-Z of 2003 for reasons amongst which:-

(a) It would be advantageous to combine the activities and operations of the petitioners and the

transferor company in a single company. The amalgamation would provide synergistic linkages based on economies in costs by combining the operations of related activities.

(b) It would be conducive to better and more efficient and economical control and conduct of the companies.

4. Zuari Leasing and Finance Corporation Limited, the transferor company was incorporated on 15th December 1994 having its Registered Office at Jai Kisaan Bhawan, Zuarinagar, Goa. The Authorised Capital consists of 1,00,00,000 equity shares of Rs. 10/- each. The Issued Subscribed and Paid-up Capital of the transferor company is 40,00,000 equity shares of Rs. 10/- each fully paid. The Memorandum and Articles of Association of the transferor company is annexed to this petition as Exhibit C. As on 31st March 2002 the transferor company had assets including fixed, capital, inventories, sundry debtors, cash and bank balances, loans and advances aggregating to Rs. 123.95 lakhs. The current liabilities and provisions aggregated to Rs. 60.88 lakhs. The transferor company as on 31st March 2002 secured loans of Rs. 16.20 lakhs. The audited balance sheet and profit and loss accounts of the transferor company is annexed to this petition as Exhibit D.

Exhibit F is the Scheme of Amalgamation between the petitioners and the transferor company.

5. Paragraph 2.2 of Part II of the Scheme refers to the Mode of transfer of the assets. It provides that pursuant to the transfer of the Undertaking as provided in Clause 2.1 all the said assets are so transferred by the transferor company to the transferee company to the end and intent that the property therein passes to the transferee company pursuant to the provisions of Section 394 of the Act as an integral part of the Undertaking.

6. Paragraphs 2.2.1 and 2.2.2 referred to the transfer of the plant and machinery and other movable assets including sundry debtors, outstanding loans, recoverable in cash or in kind or value to be received etc..

7. Paragraph 2.3 deals with the transfer of liabilities. Paragraph 2.3.1 states that the liabilities of the transferor company shall also be and stand transferred or deemed to be transferred, without further act, instrument, deed, matter or thing, to the transferee company, pursuant to the provisions of Section 394 of the said Act so as to become as and from the Appointed Date, the debts, duties, liabilities and obligations of the transferee company.

8. Paragraph 2.3.2 states that the Scheme shall not in any manner affect the rights and interests of the creditors of the transferor company or be deemed to be prejudicial to their interests and in particular the secured and statutory creditors of the transferor company shall continue to enjoy and hold charge upon their respective securities and properties.

9. The Board of Directors of the petitioners and the transferor company at their respective meetings held on 29th October 2002 and 15th January 2002 have approved the Scheme of Amalgamation of the transferor company with the petitioner company. The petitioners have annexed at Exhibit F Colly the letters of consent from the secured creditors of the petitioner company granting their consent to the said Scheme between the petitioner company and the transferor company which constitutes 13% of the debt owed by the petitioners to the secured creditors. In respect of the unsecured creditors to whom more than 5 lakhs is owed, 89.24% by value of such creditors, constituting 70.5% by value of unsecured creditors, have given their No Objection to the Scheme of Amalgamation at Exhibit F. The No Objection letters have been annexed to the petition at Exhibit G Colly.

10. By an Order of this Court, dated 5th December 2002, in Company Application No. 74-Z of 2002, the

petitioners were directed to convene a meeting of the members holding equity shares of the petitioners. The said meeting was directed to be convened on 15th January 2003 for the purpose of considering and, if thought fit, approving with or without modification, the arrangement embodied in the Scheme at Exhibit F. Notice of the meeting was served individually to all the equity share-holders of the petitioner company with a copy of the said Scheme. The notice of the meeting was also advertised in Navhind Times and Tarun Bharat, both dated 21st December 2002. By an Order of this Court, the petitioners were permitted to dispense with the advertisement in the Goa Government Gazette. In the said meeting of the equity share-holders, the arrangement embodied in the Scheme of Amalgamation was approved without any modification, with the exception of one member holding 50 equity shares, who voted against the resolution. Affidavits have been filed in respect of compliance of the Order of this Court.

11. This Court, by its Order, dated 6th June 2003, had directed the petitioners to serve notice under Certificate of Posting and/or personal delivery to (1) The District Registrar Cuddapah, Dist. Cuddapah, Andhra Pradesh; (2) Sarpanch, Gram Panchayat, Peddanapada Village, Yerraguntala Mandal, Dist. Cuddapah; (3) The Regional Director, Employees State Insurance

Corporation, Hillfort Road, Hyderabad; (4) Additional Revenue Inspector, c/o. MRO Office, Yerraguntala Mandal, Station Road, Yerraguntala, Cuddapah, Andhra Pradesh; (5) Union of India represented by General Manager/Chief Commercial Manager, South Central Railway, Rail Nilayam, Secunderabad; (6) Asst. Commissioner of Commercial Sales Tax, c/o Dy. Commissioner Commercial Taxes, Dist. Chitoor Division, Near Devi Theatre, Kappamanchi and (7) Dy. Commissioner Central Excise & Customs, Dwarka Towers, Opp. Dist. Court, Cuddapah, Andhra Pradesh. An affidavit, dated 24th June 2003 of the learned counsel appearing for the petitioners has been filed annexing at Exhibit A a Certificate of Posting of the notices towards compliance of the Order of this Court, dated 6th June 2003. On 27th June 2003, the petition was listed but none appear on behalf of the authorities to whom notices were directed to be issued.

12. I have heard Mr. Setalwad, learned senior counsel on behalf of the petitioners and Mr. Kadam on behalf of the Objector Company Hindustan Dorr-Oliver Limited. The objections filed by the Objector Company Hindustan Dorr-Oliver Limited can be summarized as under:- (i) the proposed scheme of amalgamation is per se prejudicial to the Objector/Creditor as the entire business and undertaking of the transferor company together with assets, properties and liabilities will be

transferred and will vest with the petitioners. It is averred that on account of the amalgamation of the transferor company with the petitioners, the liabilities of the petitioners will be increased and the assets of the petitioners will be decreased which will affect the interest of the Objector/Creditor prejudicially and (ii) if the scheme is confirmed, the Creditor will suffer irreparable loss, harm and prejudice and there is every possibility that the legitimate dues of the Creditor shall remain unpaid by the amalgamated company.

13. From the various statements, which have been made in the petition, based on the auditor's report, the petitioner company for the year ended 31st March 2003 after tax were 1,65.111. Taking into consideration the assets of the petitioner company, the apprehension of the Objector that the interest of the Creditor would be prejudicially affected, according to me, has no merit. The scheme, according to me, is fair, just and reasonable and is neither contrary to any provisions of law nor does it violate any public policy. Perusal of this scheme would also show that it is neither unfair nor unjust to the Creditor who has objected. The apprehension of the Objector/Creditor that the petitioner company, on sanctioning of the scheme, would not be in a position to pay their dues, according to me, is allayed by the sound financial position in which the

petitioner company stands. The majority of the secured and unsecured creditors have given their no objection to the scheme. Therefore, in my considered opinion, sanction of the scheme would not prejudicially affect the interest of the Creditors. The Supreme Court in **Miheer H. Mafatlal v. Mafatlal Industries Ltd.**, A.I.R. 1997 S.C. 506 has held that the Company Court which is called upon to sanction a scheme of compromise and arrangement has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. The Supreme Court has further held that the Court cannot have the jurisdiction like an appellate authority to minutely scrutinize the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the scheme as required by Section 391(2). The Supreme Court further held that the Court certainly would not act as a Court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial

wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. The jurisdiction of the Company Court is peripheral and supervisory and not appellate.

14. I have given my anxious considerations to the various clauses of the scheme and I find that the scheme is fair, just and reasonable and is neither contrary to any provisions of law nor does it violate any public policy. The apprehensions of the Objector/Creditor is wholly unfounded. The scheme, therefore, proposed and filed at Exhibit F in Company Petition No. 1-Z of 2003 deserves to be approved. I have also heard the Official Liquidator and the learned counsel for the Regional Director. They have no objection for approving the scheme.

15. The learned counsel for the petitioners has produced the Minutes of the Order, which is taken on record and marked 'X' for the purpose of identification. Order in terms of the Minutes of the Order at 'X'.

(P.V. HARDAS)
JUDGE.

ed's.